TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 528.

WALTER N. DIMMICK, APPELLANT,

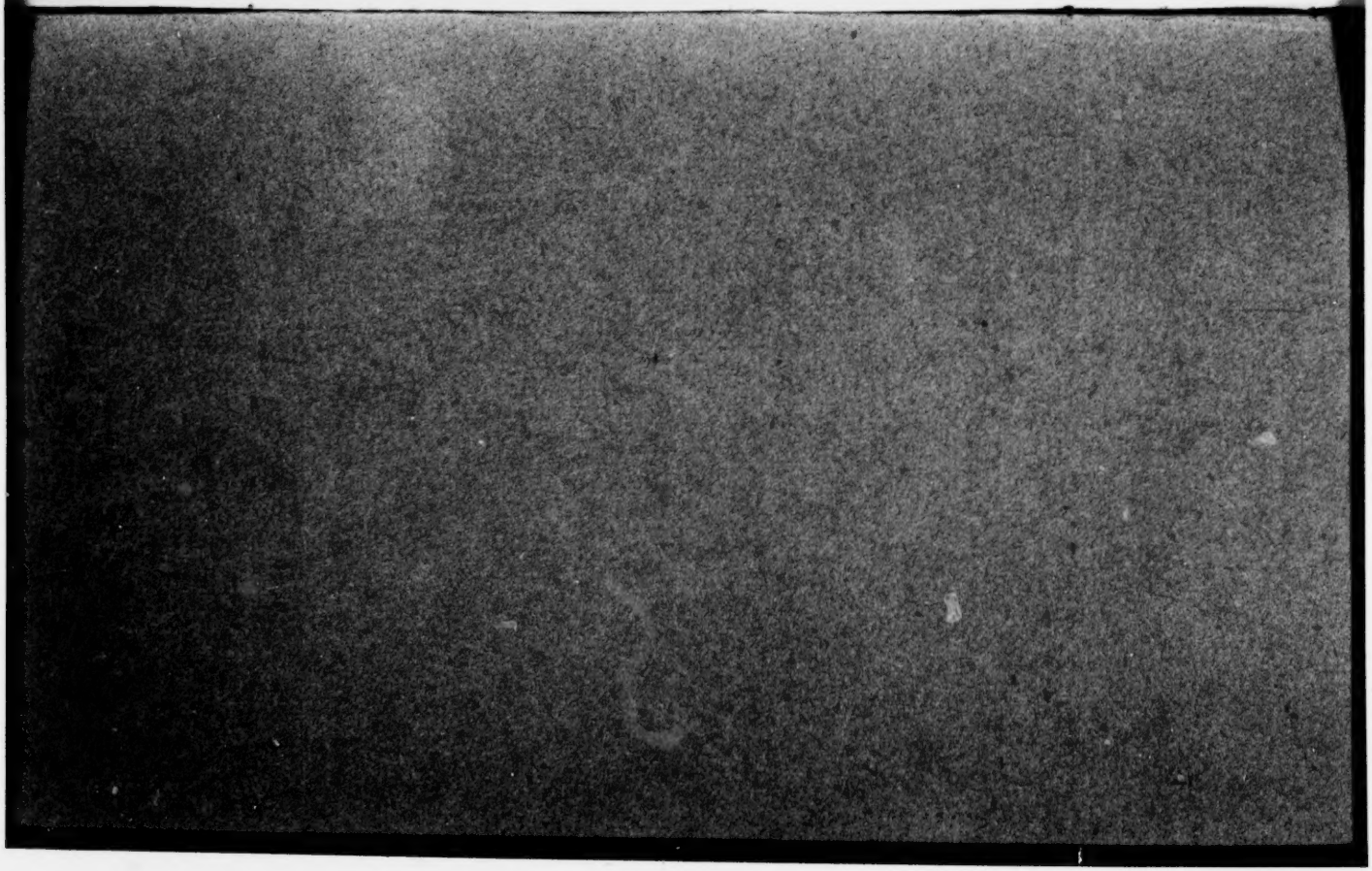
vs.

JOHN W. TOMPKINS, WARDEN OF THE STATE PRISON OF THE STATE OF CALIFORNIA AT SAN QUENTIN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

FILED DECEMBER 31, 1908.

(19,179.)



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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 10, 1904.

In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

In the Matter of the Petition and Complaint of WALTER N. DIMMICK for the Writ of *Habeas Corpus*.

Petition and Complaint for Writ of Habeas Corpus.

o the honorable the circuit court of the United States, ninth judicial circuit, northern district of California:

The petition and complaint of Walter N. Dimmick respectfully ows to your honorable court that he is illegally and unlawfully prisoned and restrained of his liberty in the State prison of the d State of California at San Quentin, by John W. Tompkins, Esq., e warden of said prison. That the said imprisonment is illegal d unlawful and in contravention of the Constitution of the United ates, to wit: article V of the amendments to the Constitution, in is: That heretofore on the 16th day of October A. D. 1901, the d Walter N. Dimmick was sentenced to imprisonment in said State ison by the district court of the United States in and for the north- n district of California, for the period of two years to date from the d 16th day of October A. D. 1901. That the said Walter N. Dim- ick has been imprisoned under said judgment, in the said State ison ever since the 13th day of April A. D. 1903; and previously ereto and from the date of said judgment to the said 13th day of pril A. D. 1903, he was imprisoned under said judgment in the county jail of the county of Alameda, by the order of the said district court. That the said Walter N. Dimmick has earned by good behavior in said prison and received credits on said ntence and term of imprisonment amounting to the period of enty-five days and the same have never been forfeited.

That on the records of the said prison the said Walter N. Dim- ick has been duly credited by the warden thereof upon said ntence and term of imprisonment, with said period of twenty-five ys. That notwithstanding the foregoing facts and the expiration said term of imprisonment, the said warden arbitrarily refuses to scharge and release the said Walter N. Dimmick from said im- isonment, and restrains him of his liberty without his consent and ainst his will. That the said Walter N. Dimmick is not detained said prison upon any writ, process or judgment or order of any urt or judge other than said judgment. That the term of im- isonment prescribed by said judgment expired on the 21st day of ptember A. D. 1903, according to the credits allowed the said alter N. Dimmick as aforesaid, and by virtue of the provisions of ction five thousand five hundred and forty-four of the Revised atutes of the United States; and in any event expired according

to its very terms, on the 16th day of October A. D. 1903. That the following is a true copy of the said judgment of the said district court of the United States, viz:

"At a stated term of the district court of the United States for the "northern district of California, held at the court-room, in the city "and county of San Francisco, on Wednesday, the 16th day of Octo- "ber 1901.

"Present: The Honorable John J. De Haven, judge.

"THE UNITED STATES OF AMERICA
vs.
"WALTER N. DIMMICK, Defendant.

3 "Convicted of making and presenting false claim as charged "in first count of indictment, and using a portion of pub- "lic moneys of the United States, to wit, the sum of $498.37, for "a purpose not prescribed by law, as charged in the fourth count "of the indictment (sections 5438 and 5497, R. S. U. S.).

"*Judgment on Verdict of Guilty on First and Fourth Counts of Indictment.*

"Marshall B. Woodworth, Esq., United States attorney; S. C. "Denson, Esq., and Bert Schlesinger, Esq., special assistants United "States attorney, and the defendant, with George D. Collins, Esq., "his attorney, came into court. The defendant was duly informed "by the court of the nature of the indictment, filed on the 16th day "of September A. D. 1901, charging him with making and present- "ing false claim, etc., and using a portion of public moneys of the "United States for a purpose not prescribed by law; of his arraign- "ment and plea of not guilty; of his trial and the verdict of the "jury on the 12th day of October, 1901, to wit:

"'We the jury, find the isoner at the bar guilty on the first "'and fourth counts of the indictment, and not guilty on the third "'count of the indictment.'

"The defendant was then asked if he had any legal cause to show "why judgment should not be pronounced against him, and no suf- "ficient cause being shown or appearing to the court, thereupon the "court rendered its judgment:

"That whereas the said Walter N. Dimmick having been duly "convicted in this court of making and presenting false claim, as "charged in the first count of the indictment, and using a portion "of public moneys of the United States, to wit, the sum of
4 "$498.37, for a purpose not prescribed by law, as charged in "the fourth count of the indictment:

"It is therefore ordered, adjudged and decreed that the said "Walter N. Dimmick be and he is hereby sentenced to be im- "prisoned at hard labor for the term of two years from October 16th

"1901; and it — further ordered that said sentence of imprison-
" ment be executed upon the said Walter N. Dimmick by imprison-
" ment in the State prison of the State of California, at San Quentin,
" Marin county, California.

" JOHN J. DE HAVEN,
" *United States District Judge,*
" *Northern District of California.*"

That the following is a true copy of the indictment referred to in the said judgment and filed in said criminal action, viz:

" *Indictment.*

" In the District Court of the United States in and for the Northern
" District of California.

"At a stated term of said court begun and holden at the city and
" county of San Francisco, State and northern district of California,
" on the second Monday of July, in the year of our Lord one thou-
" sand nine hundred and one.

" The grand jurors of the United States of America within and
" for the district aforesaid, on their oath, present: That Walter N.
" Dimmick, late of the northern district of California, hereto-
" fore, to wit, on the seventh day of April, in the year of our
" Lord one thousand nine hundred, at the city and county of
" San Francisco, State and northern district of California, then
" and there being, did then and there, knowingly, unlawfully, and
" feloniously, make and cause to be made and present and cause
" to be presented for payment to a person and officer in
" the civil service of the United States, to wit, to one W. K.
" Cole, who was then and there cashier of the mint of the
" United States of America at San Francisco, and who was author-
" ized to pay the claim herein referred to, a certain false, fictitious,
" and fraudulent claim against the United States of America, to wit,
" a claim for the sum of four hundred and ninety-eight and thirty-
" seven one-hundredths ($498.37) dollars, the said sum being for four
" thousand nine hundred and ninety-seven (4,997) pounds of sheet
" lead and one thousand nine hundred and eleven (1,911) pounds of
" lead pipe, which said sheet lead and lead pipe had theretofore been
" purchased at San Francisco, within the State and northern dis-
" trict aforesaid, by the United States for the mint of the United
" States at San Francisco, within the State and northern district
" aforesaid, from the Selby Smelting and Lead Company, a corpora-
" tion, a copy of which said claim is annexed to this indictment and
" made a part hereof and marked Exhibit "A;" and the grand
" jurors do further say that the particular items of said false, fictitious,
" and fraudulent claim appear in said Exhibit " A;" that the said
" claim was then and there, to wit, at the time and place of presen-

" tation thereof for payment, as hereinbefore stated, false, fictitious,
" and fraudulent in this: that the said claim had theretofore and on
" the twenty-sixth day of March, in the year of our Lord one thou-
" sand nine hundred, been wholly paid by the United States, and
" the articles set out in said claim had theretofore, to wit, on said last-
" mentioned date, been fully paid for by the said United States,
" and that at the time and place of making the said claim and
" presenting the same for payment the said claim was not due
" or owing by the said United States to the Selby Smelting
" and Lead Company, or to any other person, and was not
6 " due or owing at all; that on the twenty-sixth day of March,
" in the year of our Lord one thousand nine hundred the
" said Selby Smelting and Lead Company aforesaid had received
" from the United States of America the said sum of four hundred and
" ninety-eight and thirty-seven one-hundredths ($498.37) dollars, in
" full and complete payment of said claim and of the articles set out
" therein, and the said Selby Smelting and Lead Company had no
" other or further charge or claim against the United States of
"America or against the mint of the United States of America at
"San Francisco, State and northern district aforesaid, on account of
" said claim or for the sale of the articles therein set out. The said
" Walter N. Dimmick then and there, at the time and place of
" the presentation of said claim, as aforesaid, well knew that said
" claim was false, fictitious, and fraudulent, as aforesaid, and well
" knew that said claim had been paid on said twenty-sixth day of
" March, in the year of our Lord one thousand nine hundred, and
" then and there well knew that on the twenty-sixth day of March,
" in the year of our Lord one thousand nine hundred, the said Selby
" Smelting and Lead Company aforesaid had received from the
" United States of America the said sum of four hundred and ninety-
" eight and thirty-seven one-hundredths ($498.37) dollars in full and
" complete payment of said claim and of the articles set out therein,
" and he then and there well knew that the said Selby Smelting and
" Lead Company had no other or further charge or claim against
" the United States or against the mint of the United States at San
" Francisco, State and northern district aforesaid, on account of said
" claim or for the sale of the articles therein set out, and he, the said
" Walter N. Dimmick, intended then and there and thereby to de-
" fraud the United States of America—
7 " Against the peace and dignity of the United States of
" America and contrary to the form of the statutes of the said
" United States of America in such case made and provided.

" *Second Count.*

" And the grand jurors aforesaid, on their oath aforesaid, do
" further present: That Walter N. Dimmick, late of the northern
" district of California, heretofore, to wit, on the third day of Jan-

"uary, in the year of our Lord one thousand nine hundred, at the "city and county of San Francisco, State and northern district of "California, then and there being, did then and there, knowingly, "unlawfully, and feloniously, make and cause to be made, and "present and cause to be presented for payment, to a person and "officer in the civil service of the United States, to wit, to one W. "K. Cole, who was then and there cashier of the mint of the United "States of America at San Francisco, and was authorized to pay the "claim herein referred to, a certain false, fictitious, and fraudulent "claim against the United States of America, to wit, a claim for "the sum of four hundred and ninety-eight and thirty-seven one-"hundredths ($498.37) dollars, the said sum being for four thou-"sand nine hundred and ninety-seven (4,997) pounds of sheet lead "and one thousand nine hundred and eleven (1,911) pounds of "lead pipe, which said sheet lead and lead pipe had theretofore "been purchased at San Francisco, within the State and northern "district aforesaid, by the United States for the mint of the "United States at San Francisco, within the State and northern "district aforesaid, from the Selby Smelting and Lead Company, "a corporation, a copy of which said claim is annexed to this indict-
"ment and made a part hereof and marked Exhibit "A;" and
8 "the grand jurors do further say that the particular items of
"said false, fictitious and fraudulent claim appear in said Ex-"hibit "A;" that the said claim was then and there, to wit, at the "time and place of presentation thereof for payment, as hereinbefore "stated, false, fictitious and fraudulent, in this: that the said claim "had theretofore and on the twenty-sixth day of March, in the year "of our Lord one thousand nine hundred, been wholly paid by the "United States, and the articles set out in said claim had thereto-"fore, to wit, on said last mentioned date, been fully paid for by the "United States, and that at the time and place of making the said "claim and presenting the same for payment the said claim was not "due or owing by the said United States to the Selby Smelting and "Lead Company, or to any other person, and was not due or owing "at all; that on the twenty-sixth day of March, in the year of our "Lord one thousand nine hundred, the said Selby Smelting and "Lead Company aforesaid had received from the United States of "America the said sum of four hundred and ninety-eight and thirty-"seven one-hundredths ($498.37) dollars in full and complete pay-"ment of said claim and of the articles set out therein, and the said "Selby Smelting and Lead Company had no other or further "charge or claim against the United States of America, or the mint "of the United States at San Francisco, State and northern district "of California, on account of said claim or for the sale of the articles "therein set out. The said Walter N. Dimmick then and there, at "the time and place of presentation of said claim, well knew that "said claim was false, fictitious, and fraudulent, as aforesaid, and "well knew that said claim had been paid on the said twenty-sixth "day of March in the year of our Lord one thousand nine

"hundred, and he the said Walter N. Dimmick, intended
9 "then and there and thereby to defraud the United States of
"America; and for the purpose of obtaining and aiding to
"obtain the payment of said claim aforesaid, then and there know-
"ing it to be false, fictitious, and fraudulent, the said Walter N.
"Dimmick did knowingly, unlawfully, and feloniously use and
"cause to be used, and presented and caused to be presented, on
"said third day of January, in the year of our Lord one thousand
"nine hundred, at the city and county of San Francisco, State and
"northern district of California, to a person and officer in the civil
"service of the United States, to wit, to one W. K. Cole, who was
"then and there cashier of the mint of the United States, and who
"was then and there a person authorized to pay the claim herein
"referred to, a certain false bill, receipt, voucher, and account, to
"wit, a certain false bill, receipt, voucher, and account from the
"Selby Smelting and Lead Company, a corporation, to the mint of
"the United States at San Francisco, State and northern district of
"California, a copy of which said false bill, receipt, voucher, and
"account is annexed to this indictment and marked Exhibit "A"
"and is hereby made a part of this count; that the said Walter N.
"Dimmick, at the time of using and causing to be used said false
"bill, receipt, voucher, and account, as aforesaid, for the purpose of
"obtaining and aiding to obtain the payment of said claim, then
"and there well knew that said bill, receipt, voucher, and account
"was false, fictitious, and fraudulent, in this: that he then
"and there well knew that the claim set out in said bill, re-
"ceipt, voucher, and account had on the twenty-sixth day of
"March, in the year of our Lord one thousand nine hundred,
"been fully paid by the United States, and he then and there
"well knew that all the articles referred to in said
10 "bill, receipt, voucher, and account had been paid by the
"United States to the said Selby Smelting and Lead Company
"on the said twenty-sixth day of March, in the year of our Lord
"one thousand nine hundred, aforesaid, and he then and there well
"knew that the said Selby Smelting and Lead Company then and
"there had no claim or charge against the United States of America
"or against the mint of the United States at San Francisco for the
"articles referred to in said false, fictitious, and fraudulent bill,
"receipt, voucher, and account—

"Against the peace and dignity of the United States of America
"and contrary to the form of the statute of the said United States of
"America in such case made and provided.

Third Count.

"And the grand jurors, on their oath aforesaid, do further pre-
"sent: That Walter N. Dimmick, late of the northern district of
"California, heretofore, to wit, on the thirteenth day of April, in the

"year of our Lord one thousand nine hundred, at the city and "county of San Francisco, in the State and northern district of "California, then and there being, was then and there a clerk of "the United States mint at San Francisco, State of California, in "the district aforesaid, and was known and designated as chief "clerk of said mint, and as such clerk received and had in his pos- "session a sum of money, to wit, the sum of four hundred and "ninety-eight and thirty-seven one-hundredths dollars ($498.37), "lawful money of the United States of America, and of the value of "four hundred and ninety-eight and thirty-seven one-hundredths "($498.37) dollars, which money was then and there the property
"of the United of America, and unlawfully and feloniously
11 "did then and there embezzle and wrongfully convert the
"same to his own use—

"Against the peace and dignity of the United States of America "and contrary to the form of the statutes of the said United States "in such case made and provided.

"*Fourth Count.*

"And the grand jurors aforesaid, on their oath aforesaid, do fur- "ther present: That Walter N. Dimmick, late of the northern dis- "trict of California, heretofore, to-wit, on the seventh day of April, "in the year of our Lord one thousand nine hundred, and at divers "other times from and including the said seventh day of April, in "the year of our Lord one thousand nine hundred, to and including "the thirtieth day of April, in the year of our Lord one thousand "nine hundred, at the city and county of San Francisco, in the State "and northern district of California, then and there being, was "then and there a clerk of the mint of the United States at San "Francisco, State of California, in the district aforesaid, and was not "an authorized depositary of public moneys of the United States, "then and there knowingly, unlawfully, willfully, and feloniously "used a portion of the public moneys of the United States of "America, to wit, the sum of four hundred and ninety-eight and "thirty-seven one-hundredths ($498.37) dollars, lawful money of the "United States of America, for a purpose not prescribed by law— "that is to say, the said Walter N. Dimmick then and there used the "said money for his own uses and purposes—

"Against the peace and dignity of the United States of America "and contrary to the form of the statute of the said United States "of America in such case made and provided.

"MARSHALL B. WOODWORTH,
"*United States Attorney.*

12 "Sections 5438, R. S. U. S.; 5497, R. S. U. S., and the act
"of Congress of March 3, 1875, vol. 1, Supp. Rev. Stat. of the
"U. S., page 88, 2nd. ed.

"Names of the witnesses examined before the said grand jury on "finding the foregoing indictment: Wm. K. Cole, Theodore Gray, "Frank A. Leach.

"(Endorsed:) A true bill. T. C. Masteller, foreman. Presented "and filed in open court this 16th day of September, A. D. 1901. "Geo. E. Morse, clerk, by J. S. Manley, deputy clerk.

"EXHIBIT 'A.'

"Terms: Payable in U. S. gold coin, with San Francisco ex- "change.

"These goods are at risk of purchaser after delivery at dock or "depot at point of shipment. All errors or shortages must be re- "ported on receipt of goods. When practicable, all packages are "marked with gross and net weight. In case of differences, please "report which package varies.

"SAN FRANCISCO, CAL., 13 *March*, 1900.

"United States mint, San Francisco.

"Order 651.

"Bought of Selby Smelting and Lead Co.

"Office: 416 Montgomery street.
"Smelting works and cartridge factory at Vallejo Junction.
"Shot tower at First and Howard streets.

"From shot tower.

"Shipped.	Marked.	Delivered. lbs.		
"2 pcs. 12-lb. sheet lead, 4′ 0″ x 8′ 2″	.....	791		
"2 pcs. 12-lb. sheet lead, 3′ 6″ x 12′ 4″	.....	1,060		
"2 pcs. 12-lb. sheet lead, 3′ 9″ x 15′ 0″	.....	1,328		
13				
"1 pc. 12-lb. sheet lead, 5′ 9″ x 15′ 0″	.....	1,027		
"2 pcs. 12-lb. sheet lead, 8′ 2″ x 4′ 0″	.....	791		
		4,997	7½c....	$344.77
"1 reel 2-lb. AA lead pipe, 50 feet	.....	463		
"2 reels 1-lb. AAA lead pipe, 120 feet each	...	1,448		
		1,911	7c.....	133.77
				$508.54
"Less 2c. for cash.....	.....	...		10.17
				$498.37

"Received March 15, 1900.

"I. G. MESSER, *Storekeeper.*

"Paid March 26, 1900.

"SELBY SMELTING AND LEAD CO.,
"Per H. B. UNDERHILL, JR., *Secretary.*

"Correct.

"FRANK A. LEACH,
"*Superintendent.*"

Your petitioner avers that neither the first nor the fourth count set forth in the said indictment, charges any crime or public offense against the United States, nor the violation of any law of the United States making or prescribing the matter set forth in either of the said counts, a crime or public offense, nor the violation of any law of the United States prescribing or permitting imprisonment for or because of the matters set forth in said counts or in either of
14 said counts one and four of said indictment.

Your petitioner further avers that the said judgment to the extent that it requires his imprisonment in the penitentiary of the State of California is void in this: that the said United States district court in and for the northern district of California, sentenced the said Walter N. Dimmick for one year and no more upon each of the two counts of the indictment referred to in said judgment; and did not sentence the said Walter N. Dimmick to said imprisonment for a period of more than one year upon each of said counts.

That your petitioner is deprived of his liberty without due process of law, in violation of article V of the amendments to the Constitution of the United States.

Wherefore your petitioner prays that the writ of *habeas corpus* be granted herein; that the same be directed to the said warden of the State prison at San Quentin, and returnable at a time and place designated. That upon the hearing, your petitioner be adjudged entitled to his liberty and ordered discharged from said imprisonment. And your petitioner will ever pray, etc.

WALTER N. DIMMICK, *Petitioner.*

GEORGE D. COLLINS,
Attorney for Petitioner.

15 UNITED STATES OF AMERICA, }
Northern District of California, } *ss:*

Walter N. Dimmick being duly sworn deposes and says that he is the petitioner herein; that he has read the foregoing petition and complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated upon information or belief; that as to those matters he believes it to be true.

WALTER N. DIMMICK.

Subscribed and sworn to before me this 17th day of October A. D. 1903.

[SEAL.] A. DRAHMS,
Notary Public in and for the County of Marin, State of California.

(Endorsed:) No. 13493. In the circuit court of the United States, ninth judicial circuit, northern district of California. In the matter of the petition and complaint of Walter N. Dimmick, for the writ of *habeas corpus*. Petition and complaint for a writ of *habeas corpus*. Filed October 19, 1903, Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

16 At a stated term, to wit: the July term, A. D. 1903, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, held at the court room in the city and county of San Francisco, on Monday, the 19th day of October in the year of our Lord one thousand nine hundred and three.

Present: The Honorable William W. Morrow, circuit judge.

In the Matter of the Petition and Complaint of WALTER N. DIMMICK for the Writ of *Habeas Corpus*. No. 13493.

Order Denying Writ of Habeas Corpus and Allowing Appeal, etc.

Comes now George D. Collins, Esq., attorney for Walter N. Dimmick petitioner herein, and presents to the court a petition of the said Walter N. Dimmick for the writ of *habeas corpus;* and the same having been considered by the court, it is ordered that the writ of *habeas corpus* prayed in and by the petition of said Walter N. Dimmick herein be and hereby is denied and that said petition be and hereby is dismissed.

Thereupon the said attorney for petitioner presented to the court and filed the appeal of said Walter N. Dimmick and moved the court for an order allowing an appeal herein to the Supreme Court of the United States from the foregoing order denying application for writ of *habeas corpus*, said appeal so filed being accompanied by an assignment of errors to be urged by the said Walter N. Dimmick, in the Supreme Court of the United States. Whereupon, it is ordered that said appeal be and hereby is allowed; that the amount of the bond for costs upon said appeal to be executed and
17 filed by said Walter N. Dimmick, be and hereby is fixed at the sum of $500.; that upon the filing and approval of such bond, citation issue in form as prescribed by law, and that a certified transcript of the record and proceedings herein be forthwith transmitted to the Supreme Court of the United States.

18 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

In the Matter of the Petition and Complaint of WALTER N. DIMMICK for the Writ of *Habeas Corpus*.

Appeal.

In the above entitled matter the therein named Walter N. Dimmick conceiving himself aggrieved by the order and judgment of the United States circuit court for the ninth judicial circuit, northern district of California, entered on the 19th day of October A. D. 1903, in the said matter denying the petition and complaint therein filed for the writ of *habeas corpus* and denying the writ of *habeas corpus* therein, does hereby and in open court appeal from the said order and judgment to the Supreme Court of the United States and pray that this appeal be allowed in accordance with law and that the transcript of the record and proceedings and papers upon which said order and judgment were made, duly authenticated, be sent to the Supreme Court of the United States upon this appeal.

GEORGE D. COLLINS,
Attorney for the said Walter N. Dimmick.

San Francisco, October 19th, A. D. 1903.

(Endorsed:) No. 13493. In the circuit court of the United States ninth judicial circuit northern district of California. In the matter of the petition and complaint of Walter N. Dimmick for the writ of *habeas corpus*. Appeal. Filed October 19, 1903, Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

19 In the Supreme Court of the United States of America.

WALTER N. DIMMICK, Appellant,
vs.
JOHN W. TOMPKINS, the Warden of the State Prison of California, Appellee.

Assignment of Errors.

Of October term, in the year of our Lord one thousand nine hundred and three.

Afterwards to wit, on the 19th day of October, A. D. 1903, in the same term, before the justices of the Supreme Court of the United States of America, comes the said Walter N. Dimmick by Mr. George

D. Collins his counsel, and says that in the record and proceedings herein there is manifest error in this, to wit:

1. That the United States circuit court for the ninth circuit, northern district of California, committed manifest error in deciding that the term of imprisonment of the said Walter N. Dimmick has not expired.

2. That the said United States circuit court for the ninth circuit, northern district of California, committed manifest error in deciding that the said appellant is not entitled to the issuance of the writ of *habeas corpus*, upon the showing made in the petition therefor.

3. That the United States circuit court for the ninth circuit, northern district of California, committed manifest error in denying the petition for the writ of *habeas corpus* and in denying the said writ of *habeas corpus*.

4. That the said United States circuit court for the ninth circuit, northern district of California, committed manifest error in deciding that it was lawful for the district court of the United States in and for the northern district of California to sentence the said Walter N. Dimmick to an imprisonment in the penitentiary of the State of California, at San Quentin in said State, the fact being, as appearing from the said petition for the writ of *habeas corpus*, that the said imprisonment does not exceed the period of one year on each count of the indictment upon which the said Walter N. Dimmick was convicted and sentenced in the said United States district court.

5. That the United States circuit court for the ninth circuit, northern district of California, committed manifest error in deciding that the said Walter N. Dimmick is not deprived of his liberty without due process of law, in contravention of article V of the amendments to the Constitution of the United States.

6. That the United States circuit court for the ninth circuit, northern district of California, committed manifest error in deciding that the first count in the indictment set forth in the petition for the writ of *habeas corpus*, charges or states facts constituting a crime or public offense against the United States or that the matters set out in said first count, constitute a violation of a law of the United States, prescribing punishment by imprisonment.

7. That the United States circuit court for the ninth circuit, northern district of California, committed manifest error in deciding that the fourth count in the indictment set forth in the petition for the writ of *habeas corpus*, charges or states facts constituting a crime or public offense against the United States or that the matters set out in said fourth count constitute a violation of a law of the United States prescribing punishment by imprisonment.

8. That the United States circuit court for the ninth circuit, northern district of California, committed manifest error in deciding that the judgment set forth in said petition is not void and that the same does not deprive the said Walter N. Dimmick of his liberty

without due process of law, in violation of article V of the amendments to the Constitution of the United States.

9. That the said Walter N. Dimmick is deprived of his liberty without due process of law, and in contravention of the Constitution and laws of the United States.

Wherefore the said Walter N. Dimmick prays that the said order and judgment of the United States circuit court for the ninth circuit, northern district of California, be reversed, annulled and altogether held for nought, and that the said Walter N. Dimmick be restored to all things which he hath lost by reason of the said judgment; and that an order be made directing the discharge from imprisonment of the said Walter N. Dimmick.

GEORGE D. COLLINS,
Attorney for Appellant, Walter N. Dimmick.

(Endorsed:) No. 13493. In the Supreme Court of the United States. Walter N. Dimmick, appellant *vs.* John W. Tompkins, the warden of the State prison of California, appellee. Assignment of errors. Filed October 19, 1903, Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

22 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

WALTER N. DIMMICK, Appellant,
vs.
JOHN W. TOMPKINS, Warden, etc., Appellee.

Bond on Appeal.

Know all men by these presents, that we Morris Levy and Geo. D. Collins, both of the city and county of San Francisco, State of California, are held and firmly bound unto the above mentioned John W. Tompkins in the sum of five hundred dollars to be paid to the said John W. Tompkins for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators jointly and severally firmly by these presents.

Sealed with our seals and dated the 19th day of October A. D. 1903.

Whereas the above named Walter N. Dimmick has prosecuted an appeal to the Supreme Court of the United States to reverse the order and judgment rendered in the matter of the petition and complaint of the said Walter N. Dimmick for the writ of *habeas corpus* in the said circuit court of the United States for the northern district of California, now therefore the condition of this obligation is such that if the above named Walter N. Dimmick shall prosecute the said appeal to effect and answer all damages and costs if he fail

to make said appeal good, then this obligation shall be void,
23 otherwise the same shall be and remain in full force and virtue.

MORRIS LEVY. [SEAL.]
GEO. D. COLLINS. [SEAL.]

UNITED STATES OF AMERICA,
Northern District of California,
City and County of San Francisco, } ss:

Morris Levy and Geo. D. Collins being duly sworn each for himself deposes and says that he is one of the sureties on the foregoing bond; that he is worth the sum of five hundred dollars over and above all his debts and liabilities exclusive of property exempt from execution. That he is a resident of the city and county of San Francisco.

MORRIS LEVY.
GEO. D. COLLINS.

Subscribed and sworn to before me this 19th day of October, A. D. 1903.

[SEAL.] JULIUS CALMANN,
Notary Public in and for the City and County of San Francisco, State of California.

The foregoing bond is approved.

WM. W. MORROW,
Circuit Judge.

(Endorsed:) No. 13493. In the United States circuit court ninth judicial circuit, northern district of California. In the matter of the petition and complaint of Walter N. Dimmick for a writ of *habeas corpus.* Bond on appeal. Filed Oct. 20, 1903 Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

24 *Præcipe.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, Northern District of California.

In the Matter of the Petition of WALTER N. DIMMICK for the Writ of *Habeas Corpus.*

To the clerk of the said court.

SIR: Please prepare and transmit to the United States Supreme Court, as the record on appeal in the above entitled matter, a certified transcript of the following record and proceedings, viz:

1. The petition for the writ of *habeas corpus*, with the endorsements thereon.
2. The motion for the writ of *habeas corpus* and order denying same as appear in the minutes of said court.
3. The appeal and order allowing same, and original assignment of errors.
4. The original citation on appeal and service of same.
5. A certificate to the foregoing record and a statement in the certificate that a bond for costs on the appeal, in the penal sum of $500 and approved by the Hon. W. W. Morrow, the judge of said court, has been filed as required by the order allowing the appeal.
6. *Præcipe* for transcript on appeal.

Respectfully,

GEO. D. COLLINS,
Attorney for Appellant.

(Endorsed:) No. 13493. In the United States circuit court ninth judicial circuit, northern district of California. In the matter of the petition and complaint of Walter N. Dimmick for a writ of *habeas corpus*. *Præcipe*. Filed Oct. 20, 1903, Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

25 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

In the Matter of the Petition and Complaint of WALTER N. DIMMICK for the Writ of *Habeas Corpus*. No. 13493.

Certificate to Record on Appeal.

I, Southard Hoffman, clerk of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, do hereby certify the foregoing pages, numbered from 1 to 24, inclusive, to be a full, true, and correct copy of the record and proceedings in the above-entitled cause, and that the same constitute the transcript of the record herein upon appeal to the Supreme Court of the United States.

I further certify that the cost of the foregoing transcript of record is $15.40, and that said amount was paid by George D. Collins, attorney for Walter N. Dimmick; and that the original citation issued herein is hereto annexed.

In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court, this 28th day of October A. D. 1903.

[Seal U. S. Circuit Court, Northern Dist. Cal.]

SOUTHARD HOFFMAN.
Clerk of United States Circuit Court, Ninth Judicial Circuit, Northern District of California.

26 *Citation on Appeal.*

UNITED STATES OF AMERICA, }
Northern District of California, } ss:

The President of the United States of America to John W. Tompkins, warden of the State prison of the State of California at San Quentin, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, in the District of Columbia on the 30th day of November A. D. 1903, pursuant to an appeal filed in the clerk's office of the circuit court of the United States, ninth judicial circuit, northern district of California, wherein Walter N. Dimmick is the appellant and you, the said John W. Tompkins are the respondent, to show cause if any there be, why the judgment of the said circuit court of the United States, in the matter of the petition and complaint of Walter N. Dimmick for the writ of *habeas corpus* mentioned in the said appeal, should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States this 19th day of October in the year of our Lord one thousand nine hundred and three.

WM. W. MORROW,
Circuit Judge.

Service of the foregoing citation and receipt of a copy thereof, on this 20th day of October A. D. 1903 is hereby acknowledged.

MARSHALL B. WOODWORTH,
United States Attorney, Representing Appellee.

27 [Endorsed:] In the United States circuit court, ninth judicial circuit, northern district of California. In the matter of the petition and complaint of Walter N. Dimmick for a writ of *habeas corpus.* Citation on appeal and admission of service Filed Oct. 20, 1903, Southard Hoffman, clerk, by W. B. Beaizley deputy clerk. George D. Collins, 21–22 Crocker bldg., San Francisco, Cal., attorney for petitioner.

Endorsed on cover: File No. 19,179. N. California C. C. U. S. Term No. 528. Walter N. Dimmick, appellant, *vs.* John W. Tompkins, warden of the State prison of the State of California at San Quentin. Filed December 31", 1903. File No. 19,179.